there. He published a notice in the Times of Malaya of the 31st March, 1931, announcing that he had purchased the new business, but it was silent as to his withdrawal from the firm of Kadermastan & Co. He says that he told the plaintiff, his clerk, and others, that he had left the latter firm.

The plaintiff called one of the partners in Kadermastan & Co., who stated that the defendant had never retired from the firm. He produced the account books showing that the defendant had never withdrawn his share of the capital. The defendant admits that he left his share in the firm, but says that he had given up all hope of recovering it and abandoned it.

The defence is that when the defendant started a new business on the 31st March, 1931, he abandoned his interest in the old business, and was no longer a partner therein. It may be possible to abandon one's rights in partnership without giving notice, but in my opinion a partner cannot get rid of his liabilities in that way. As the defendant never gave notice to his partners of his withdrawal from the partnership, he is, in my opinion, still a partner. To hold otherwise would lead to all manner of difficulties. It is impossible, for example, to say on what date the partnership was dissolved. The defendant stated in his evidence that he ceased to be a partner in 1930, and that he was not a partner in the beginning of 1931; whereas he had sworn an affidavit on the 10th March, 1931, in Civil Suit 149/31 stating that "I am also a partner in the firm of S. K. Kader Mastan & Co., of No. 53, Treacher Street, Ipoh." A process of abandonment is so indefinite, that for a considerable period during the process, it would be impossible to say whether he was a partner or not. For these reasons I am of opinion that he did not cease to be a partner by mere abandonment and inactivity.

There will be judgment for the plaintiff with costs.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

McFALL, J.

August, 18, 1933.

RE YAP TAI KONG.

EX PARTE A. V. P. M. R. M. RAMASAMY CHETTIAR.

[SELANGOR BANKRUPTCY No. 249 OF 1932]

Land Code, 1926, sections 135, 136—Appropriation of rents by chargee from the bankrupt's tenants—Bankruptcy Enactment, 1912, section 9.

A notice served on the bankrupt's tenants under section 136 of the Land Code, 1926, appropriates to the chargee the rents of the charged land already due and unpaid and the rents to become due. All sums paid for rents by tenants after service of that notice should go to the chargee, and all sums paid before service of that notice to the Official Assignee.

R. S. Jervoise, Official Assignee, in person.

McFALL, J.—This is an application to the Court under section 78 sub-section (iii) of the Bankruptcy Enactment, 1912, for a direction whether (a) the notice served on the bankrupt's tenants under section 136 of the Land Code, 1926, only takes effect as regards rents becoming due and payable to the chargee as and from the date of the chargee's notice or (b) whether or not it also affects arrears of rent due on the date of the notice and not paid until after the notice.

The facts are:—

On 24th November, 1932, a receiving order was made against Yap Tai Kong and he was adjudicated bankrupt.

Among the bankrupt's assets were certain lands with houses thereon which were charged to the Chartered Bank of India, Australia and China at Kuala Lumpur. The tenants of certain houses failed to pay their monthly rentals regularly and the rentals were in arrears.

On 20th March, 1933, the chargee Bank through its solicitors gave notice to the tenants as follows:—

> "Dear Sirs,
>
> We are instructed by the Chartered Bank of India, Australia and China to give you notice under section 136 of the Land Code 1926 that they hold a charge over the above premises and to request you to pay the rent to them in future instead of to The Official Assignee as representative of the estate of Yap Tai Kong a bankrupt.
>
> Our clients' receipt in writing for the rent will be a sufficient discharge for any rents received by them.
>
> Kindly acknowledge receipt of this letter.
>
> Yours faithfully,
> Sd. Bannon & Bailey."

At 20th March, 1933, one of these tenants, who occupied house No. 118 Sultan Street at a rental of $85/- a month payable in advance, owed $85.00 for the month of March and $240.00 arrears in respect of past months. He has paid up both sums to the Official Assignee.

On 25th May 1933, the chargee Bank through its solicitors gave notice to the tenant of 118, Sultan Street, requiring him to pay all rents in arrears (if any) and all future rents to Messrs. Walter Grenier and Company on chargee's behalf.

The law relevant appears to be as follows:—
Section 9 Bankruptcy Enactment, 1912.

> "(i) On the making of a receiving order the Official Assignee shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Enactment, no creditor to whom the debtor is indebted, in respect of any debt provable in bankruptcy, shall have any remedy against the property or person of the debtor in respect of the debt or shall commence any action or other legal proceeding in respect of such debt unless with the leave of the Court and on such terms as the Court may impose.

(ii) This section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed."

Sections 135 and 136, Land Code, 1926.

"135. The chargee upon default in payment of the principal sum or any part thereof, or of any interest or periodical payment secured by any charge, may

(*a*) receive the rents of the charged land,

(*b*) distrain upon the occupier or tenant of the said land for the rent then due.

136. Whenever a chargee shall give notice of his demanding to receive the rents of the charged land to the tenant or occupier, or other person liable to pay on account of the rents thereof, all the powers and remedies of the chargor in regard to receipt and recovery of and giving discharges for such rents shall be suspended and transferred to the said chargee until such notice be withdrawn or the charge be satisfied and a discharge thereof duly registered, and in every such case the receipt in writing of the chargee shall be sufficient discharge for any rents therein expressed to be received, and no person paying the same shall be bound to enquire concerning any default or other circumstance affecting the right of the person giving such notice beyond the fact of his being duly registered as chargee of the land; provided that nothing herein contained shall interfere with the effect of any Order of Court in regard to the payment of rent under the special circumstances of any case, or shall prejudice any remedy of the chargor against the chargee for wrongful receipt of rents or for an account."

Rent in the land Code 1926 means whatever is to be paid annually on account of the use or occupation of land whether in money or in kind. In any event section 523 and form 175 in the third schedule to the Civil Procedure Code shew that when the sum payable monthly by a tenant occupying a house or premises to the landlord for such occupation becomes overdue, than such sum is in arrear and can be distrained for.

From the two sections 135 and 136 of the Land Code it is obvious that upon default a chargee on giving notice to the tenant of charged land to receive the rent becomes entitled to recover the rent thereafter becoming due and to recover the rent then in arrears and to distrain for such arrears if necessary. The service of the notice to receive rent suspends all the powers and remedies of the chargor in regard to receipt and recovery of and giving discharges for such rents already due or to become due and transfers such powers to the chargee who alone can give discharges thereafter. Though the right to recover arrears in this case may have passed to the Official Assignee on the chargor's bankruptcy, yet by virtue of section 9, sub-section (ii) the chargee's right to realize or otherwise deal with his security remains expressly unimpaired, and the chargee's notice will suspend the power of the Official Assignee to receive or recover rents and to give discharges for the same.

The Court is therefore of opinion that the notice of 20th March, 1933, appropriated to the chargee the rents of the charged land already due and unpaid and the rents to become due, and that all sums paid for rents by tenants after service of that notice should go to the chargee, and all sums paid before service of that notice to the Official Assignee.

The direction requested will be "yes" in terms of clause (b) of the application.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

August 15, 1933.

MUTUAL TRUST BENEFIT ASSOCIATION LIMITED

A. T. DURRAY.....Appellants.

vs.

PUBLIC PROSECUTOR.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1933]

Insurance—Life Assurance—Life Assurance Companies Enactment, 1924, sections 2, 3, 4, 29.

The first appellant was a limited company carrying on "Marriage and Death Benefit Schemes" and the second appellant was the managing director. Both the appellants were convicted by the Magistrate Kuala Lumpur, of carrying on life assurance business and failing to comply with the requirements of section 4 of the Life Assurance Companies Enactment, 1924.

The certificate of the company under the Death Benefit Scheme was as follows:—

"Mutual Trust Benefit Association Ltd: Kuala Lumpur

Incorporated in F.M.S.

DEATH BENEFIT SCHEME CERTIFICATE OF MEMBERSHIP

Registered No. 615—3/D

This is to certify that P. Kuppammal D/O K. Pakirisamy of Kuala Lumpur is a member in the Third Class Death Benefit Scheme of the Mutual Trust Benefit Association Ltd: from the month of April one thousand nine hundred and thirty three and in the event of her death after three years from date hereof her nominee or nominees will be paid a Death Benefit under the rules, terms and conditions of this scheme.

This certificate shall be produced when claims are paid with receipts for the last payments of three months' subscriptions.

Dated at Kuala Lumpur, this twenty-eighth day of April one thousand nine hundred thirty three.

Sgd. A. T. Durray
Managing Director.

stamped with 4 cents stamp.

Sgd. ?
Secretary.

Note:—This certificate is not transferable."

Rule 12 of the rules of the company provided as follows:—

"12. Continuation of Subscription:—A member shall have to continue to pay his or her subscriptions for 20 years from the date of his or her membership or until his or her marriage or death if previous. After 20 years the subscription shall cease, but the membership shall continue and the member shall be eligible for claims at any time on death or marriage."

Held, that the certificate of the company under the Death Benefit Scheme was a policy within the definition of "policy of assurance upon human life" in section 2 of the Life Assurance Companies Enactment, 1924, and that the appellants were rightly convicted of carrying on a life assurance business.

E. D. Shearn and *P. C. Au-Yong* for the appellants.